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BONNIE MOSS, Tenant/Petitioner, v. TAKOMA PARK BAPTIST CHURCH Housing Provider/Respondent.	Case No.: RH-TP-06-28846 *In re* 6825 Piney Branch Road, N.W.

FINAL ORDER

I. Introduction

This Order follows an evidentiary hearing on July 26, 2007, at which Tenant/Petitioner Bonnie Moss appeared *pro se* and Sandra Maddox, Esquire, appeared for the Housing Provider/ Respondent Takoma Park Baptist Church. At the end of the hearing, the parties agreed to submit Proposed Findings of Fact and Conclusions of Law with a deadline of August 17, 2007. Respondent's proposals were filed one day after the agreed date with a motion for an extension of the time for filing. Petitioner was then given an opportunity to file a rebuttal, which was filed on September 14, 2007. Therefore, the record closed on September 14, 2007.

Bonnie Moss filed her tenant petition on November 28, 2006, with the following claims: 1) A proper thirty (30) day notice of rent increase was not provided before the rent increases became effective; 2) Rent increases in 2005 and 2006 were taken while her house was not in substantial compliance with District of Columbia Housing Regulations; 3) Services and facilities

had been permanently eliminated; 4) Services and facilities had been substantially reduced; and 5) Retaliatory action had been taken against her.

Exhibits are listed in the Appendix. Of those listed, all but two exhibits were admitted by stipulation. The two exceptions are: 1) Housing Provider's exhibit 10 which purports to list dates of abatement of Housing Code Violations. That exhibit was not admitted because it is not self authenticating and there was no stipulation to its admission. The document is a photocopy that lacks a date and official seal. 2) I did not admit Petitioner's Exhibit 122, an obituary notice that was cumulative evidence on the issue of Tenant's absence from the house in July 2005.

Based on the testimony at the hearing and the record as a whole, I make the following findings of fact and conclusions of law.

II. Findings of Fact

1. Tenant/Petitioner Bonnie Moss ("Tenant") has rented a house at 6825 Piney Branch Road, N.W., from Housing Provider Takoma Park Baptist Church ("TPBC" or "Housing Provider") for more than 10 years, since May 1997.

2. In 2000, 2002 and 2003, Tenant sent TPBC letters about needed repairs on the house. The letters were addressed to the Chairman of Rental Properties, Mac Saucier. Among the concerns Petitioner expressed, were: the exterior needed painting, down spouts and gutters were leaking; and a problem with the roof resulted in water seeping in the walls. Petitioner Exhibits (PX) 162-166.

3. In November 2004, Tenant discussed needed repairs with Mr. Rollins, the Properties Chair at TPBC.

4. Hugh Brown became the Chairman of Rental Properties at TPBC early in 2005. At that point, none of the repairs Tenant had requested since 2000 had been made.

5. On January 4, 2005, Mr. Brown filed a Certificate of Election of Adjustment of General Applicability (CPI-W) for 2005 with the Department of Consumer and Regulatory Affairs (DCRA) Housing Regulation Administration for an increase in the rent ceiling, but not the rent charged, from $930 to $956[1]. By the terms of that Certificate, Petitioner's rent was to remain at $930. PX 107. Tenant was notified of the rent ceiling adjustment by mail. PX 108.

6. On March 21, 2005, TPBC filed with DCRA, notice for a second rent ceiling adjustment for 2005, which was also based on the CPI-W, resulting in a rent ceiling increase from $956 to $982, effective May 1, 2005. Respondent's Exhibit (RX) 1. TPBC also filed for an increase in the rent to be charged. An unsigned affidavit form indicated that a copy of the notice was mailed to Petitioner. TPBC asserts that it notified Tenant that her rent would increase from $930 to $982, effective May 1, 2005.

7. Tenant did not receive notice of a rent increase in March 2005. Although TPBC believes it was sent in March 2005, it did not produce evidence supporting that belief. Tenant continued to pay $930 per month. Housing Provider returned Tenant's rent checks with a message that they had been written for an incorrect amount.

[1] On October 1, 2007, the rental housing functions of the Department of Consumer and Regulatory Affairs (DCRA) were transferred to the Department of Housing and Community Development (DHCD). The Rental Accommodations and Conversion Division (RACD) functions were assumed by the Rental Accommodations Division (RAD) of DHCD. The transfer does not affect any of the issues in this case.

8. On July 28, 2005, Housing Provider sent Tenant a Notice to Correct or Vacate citing "nonpayment of rent June 2005 ($982.00), July 2005 ($982.00) and partial payment of rent May 2005 ($52.00) totaling two thousand sixteen dollars ($2016.00)." PX 123.

9. Tenant agreed to pay the increase Housing Provider was seeking.

10. On September 26, 2005, Tenant sent a letter to Mr. Brown, in which she stated, among other things, that she had made a complaint to DCRA about needed repairs. PX 212.

11. A housing inspector from DCRA inspected the house in October and November, 2005. RX 1-6; PX 170-172, 175-180.

12. On October 5, 2005, William Winter, Housing Inspector with DCRA, cited TPBC for accumulation of trash and excessive growth exceeding ten inches, violations that were abated before the re-inspection date of October 28, 2005. PX 170.

13. Also on October 5, 2005, Mr. Hunter issued a Housing Violation Notice for: "Exposed exterior wood surfaces are not being kept painted or covered with preservative, and the wood used in the exterior surface is not customarily used in its natural state." Thirty days were given for abatement. PX 172.

14. On October 24, 2005, TPBC filed a Complaint for Possession of Real Estate with the Landlord and Tenant Branch of Superior Court for Tenant's failure "to vacate property after notice to quit expired." PX 320.

15. TPBC had the vegetation cut to a level below what Tenant thought was reasonable. In the process, the rusted fence that had become entangled in the growth was removed and

discarded. The parties disagree about the effect on the aesthetics in the yard without the fence. In a letter dated October 27, 2005, to TPBC, Tenant complained that workers had arrived unannounced and cut plantings indiscriminately, including "legitimate shrubs." PX 182.

16. From the time Tenant rented the housing accommodation in 1997 until workers arrived in the fall of 2005, she often sat in the yard, gardened in that area, invited people over to sit with her and allowed her two cats into the yard.

17. On November 1, 2005, the housing inspector issued several Housing Violation Notices, including: 1) a defective smoke detector, with a single (1) day abatement period; 2) an obstructed gutter with a seven day completion time period; 3) loose and peeling paint and ceiling dampness inside the house; 4) rotted downspouts and gutters; 5) peeling paint on ceiling in bedroom; and 6) dampness in the walls: Thirty days were given to abate those problems. PX 175-177.

18. The gutters and downspouts were repaired, and the smoke detector was replaced by December 2005.

19. On May 2, 2006, Housing Provider filed with DCRA a Notice of Rent Increase Charged from $982 to $1023 per month, effective July 1, 2006. The increase was $41.00 based on the 4.2% CPI-W for 2006. PX 121.

20. At the time of the May 2006 rent increase notice, the house was in need of paint.

21. On June 2, 2006, Mr. Brown sent a letter to Tenant telling her that repairs would be made on church properties and advising that in "some cases, you may only receive 24 hour advance notice." RX 16c.

22. A letter Mr. Brown remembers was mailed to Tenant and dated August 23, 2006, states that her rent would be increased to $1023 a month as of October 1, 2006. RX 11. Letters that followed in October, 2006 reminded Tenant of the increase and asked for $982 for the September rent that had not been paid.

23. On September 7, 2006, Tenant wrote a letter to TPBC with a reminder that she was to be given 24 hour notice before workers arrived to do work. She complained about repeated violations of that agreement when workers were doing yard work.

24. On September 21, 2006, Mr. Brown sent Tenant a letter informing her that the house would be painted beginning on September 25th. He instructed that no one was to be in the house from 8:00 A.M. to 5:00 P.M. while the work was being done. PX 210. The house was not painted during the time specified in the letter.

25. Tenant did not sign for letters sent to her by certified mail; they were returned to TPBC.

26. Because of misunderstandings regarding whether Tenant received a Notice of Rent Increase in August 2006, Housing Provider made the 2006 rent increase effective October 1, 2006.

27. At the time of the October 2006 rent increase, the house had not yet been painted. Storm windows had not been replaced. Tenant moved the storm windows to the basement of the house because they were left laying in the yard. As the weather got colder, Tenant's energy bills increased.

28. On November 12, 2006, TPBC sent Tenant a Notice to Correct or Vacate with a violation described as: "No payment of rent for September 2006 in the amount of $962.00. No payment of rent for October 2006 in the amount of $1,023.00. Uncooperative with Landlord." Tenant was given 30 days to cure the violation. PX 237.

29. On November 21, 2006, Tenant wrote to TPBC with the concern that the storm windows and frames had been removed.

30. On November 28, 2006, Tenant filed the Tenant Petition at issue here.

31. The house was painted at the end of November or beginning of December 2006. No one informed Tenant of the painters' arrival.

32. On December 1, 2006, Tenant sent TPBC a letter with rent checks for September, October and November, 2006. Mr. Brown returned all three checks to her because they were made out for "the incorrect rental amount."

33. On January 29, 2007, TPBC requested in the Landlord Tenant Branch of Superior Court a non redeemable judgment for possession against Tenant for failure to pay full rent. However, TPBC failed to appear for the scheduled hearing in Superior Court. PX 261.

34. A Deputy United States Marshall served Tenant with a Writ of Possession dated February 16, 2007, which commanded the Marshall "to take possession of the premises occupied by you . . . and . . . I shall, if ordered by plaintiff [Takoma Park Baptist Church], proceed on any weekday as early as February 22, 2007 and as late as May 2, 2007, at any time to execute said writ, remove any personal property found thereon and take possession of the premises." PX 257.

35. On March 9, 2007, Tenant paid $982 to the Court.

36. TPBC withdrew the eviction complaint on March 12, 2007. PX 266.

37. Also, on March 12, 2007, Tenant received a 30-day Notice to Correct or Vacate for "failure to pay monthly rent of $1023 from January through March. Total amount due $3069." PX 269.

III. Analysis

1. Tenant argues that the rent increases in 2005 and 2006 were improper and that retaliatory action had been taken against her when she asserted her rights. Specifically, Tenant argues: 1) the increases were based on incorrect rent ceiling increases; 2) the Housing Provider failed to provide her with the requisite 30-day notice; and 3) there were substantial housing code violations at the time of the 2005 and 2006 rent increases.

2. This matter is governed by the Rental Housing Act of 1985, D.C. Official Code § 42-3501.01-3509.07 ("the Act"), the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code § 2-501-510, the District of Columbia Municipal Regulations (DCMR), 1 DCMR 2800-2899, 1 DCMR 2920-2941, and 14 DCMR 4100-4399.

3. Pursuant to the Act, the application of the CPI-W increase, or the adjustment of general applicability:

> [A]llows housing providers the option to increase rent ceilings annually in order to keep up with inflation. The adjustment 'shall be equal to the change during the previous calendar year, ending each December 31, in the Washington, D.C. Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items during the preceding calendar year,' subject to a cap of ten percent. D.C. Code

> § 42-3502.06(b). It is the RHC's duty to determine the amount of the general applicability adjustment annually and publish it by March 1 of each year. *See id.* and D.C. [Official] Code § 42-3502.02(a)(3). The adjustment is published annually in the D.C. Register with an effective date of May 1.

Sawyer Prop. Mgmt. Inc. v. D.C. Rental Hous. Comm'n, 877 A.2d 96, 104 (D.C. 2005) (footnotes omitted).

A. 2005 Rent Increase

4. Tenant correctly relies on 14 DCMR 4206.3, which provides that a "housing provider may take and perfect a rent ceiling adjustment of general applicability only once in any twelve (12) month period." Indeed, the language of the statute and regulation is clear; only one rent ceiling increase may be taken in one year. Consequently the May rent increase in 2005 was not valid.

5. TPBC concedes that the 2005 increase in the rent charged was not valid because it was based on the second CPI-W filed in one year. Nevertheless, it argues that its request for a rent ceiling increase filed in January 2005 is valid because it was properly filed and perfected. I agree. The rent ceiling increase was permissible; the rent charged was not.

6. Therefore, the invalid March 2005 filing and demand for a rent increase effective May 1, 2005 entitles Tenant to a rent refund, whether or not the rent increase was paid. *See Kapusta v. District of Columbia Rental Hous. Comm'n*, 704 A.2d 286, 287 (D.C. 1997). That refund is $52 per month from May 1, 2005 to the date of the hearing because the 2005 demand for an increase in rent charged from $930 to $982 continued.

7. The applicable regulations provide for the award of interest on rent refunds at the interest rate used by the Superior Court of the District of Columbia pursuant to D.C. Code § 28-3302(c),

from the date of the violation to the date of issuance of the decision. 14 DCMR 3826.1 – 3826.3; *Marshall v. District of Columbia Rental Hous. Comm'n*, 533 A. 2d 1271, 1278

(D.C. 1987). "Post judgment interest shall continue to accrue until full payment, or an intervening decision, order, or judgment modifies or amends the judgment or accrual of interest."

14 DCMR 3826.4

8. The chart in Appendix A represents the interest calculation up to the date of the hearing. It identifies the month, overcharge, months held and monthly interest rate based on 5% per annum (0.004 per month). Interest is calculated for each month and totaled. That interest ($153.17) plus the overcharges ($1976) total $2129.17

9. Because the 2005 rent increase is invalidated based on the inaccurate filings, I do not address the claim that the increase was invalid because of housing code violations.

B. 2006 Rent Increase

10. Next is the question of the legality of the 2006 increase. When a housing provider proposes a rent increase, he or she must "certify to the tenant, with the notice of rent adjustment that the rental unit and the common elements of the housing accommodation are in substantial compliance with the housing regulations . . . ." 14 DCMR 4204.4(b).

11. "Substantial compliance" means the absence of substantial housing code violations as defined in 14 DCMR 4216.2. "Substantial violation" means the presence of any housing condition, the existence of which violates the housing regulations, or any other statute or

regulation relative to the condition of residential premises and may endanger or materially impair the health and safety of any tenant or person occupying the property." D.C. Official Code

§ 42-3501.03(35).

12. Most of the necessary work on the housing accommodation at issue was completed by November 2006. However, at the time of the October 2006 rent increase, the house had not yet been painted and storm windows had not been replaced. The question for decision is whether those deficiencies constituted "substantial housing code violations" such that TPBC should be precluded from implementing a rent increase on October 1, 2006.

13. An example of substantial housing code violations precluding a rent increase can be found in *McCulloch v. District of Columbia Rental Housing Com*., 584 A.2d 1244, 1250 (D.C. 1991). In that case, the violations invalidating a rent increase were ill-fitting windows and leaky roofs, factors that impaired health and safety. Substantial housing code violations could also be found based on the duration and number of violations present. 14 DCMR 4216.2 (a)-(u). The violations that existed at the time of the October 2006 rent increase in this case do not rise to such levels. Unlike the leaky roofs in *McCulloch, supra*, they did not endanger or materially impair the health and safety of Tenant. Nor were the violations numerous and prolonged. Most of the work had been done, although the house was still in need of paint and storm windows. Because the violations present at the time of the rent increase were not substantial, the rent increase in 2006 was valid. Nevertheless, as is seen below, the lack of storm windows constitutes a reduction in services or facilities.

C. Services and Facilities

14. Tenant alleges that services and facilities in the housing accommodation were substantially reduced or permanently eliminated, specifically that the use of her yard was reduced and protection of storm windows eliminated because they have not been replaced.

15. She contends that use of her yard has been reduced since the fall of 2005. Until August 5, 2006, the applicable statute provided that a reduction in the rent ceiling was the remedy for decreases in related services or facilities.[2] Therefore, in this case, the remedy for a decrease in services and facilities from May 2006 until August 5, 2006, is a reduction in the rent ceiling.

16. Section 42-3502.11 of the Act was amended by D.C. law 16-145, effective August 5, 2006, which eliminated rent ceilings.[3]

17. In this case, Tenant's remedy for reductions in services and facilities from August 5, 2006 to January 20, 2007 is a reduction in the rent she was charged.

18. A housing provider may not be found liable for substantial reduction in related services unless the housing provider has been put on notice of the existence of the conditions. *Calomiris Inv. Corp. v. Milam*, TP 20,144 and TP 20,160 and 20,248 (Apr. 26, 1989). Letters from Tenant to TPBC provided the requisite notice.

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[2] If the Rent Administrator determines that the related service or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease ***the rent ceiling***, as applicable, to reflect proportionally the value of the change in services and facilities. D.C. Official Code, § 42-3502.11 (2001) (emphasis added)

[3] If the Rent Administrator determines that the related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease the ***rent charged***, as applicable, to reflect proportionally the value of the change in services or facilities. D.C. Official Code, § 42-3502.11 (2006)(emphasis added).

19. The Rental Housing Commission has held consistently that the hearing examiner, now the Administrative Law Judge, is not required to assess the value of a reduction in services and facilities with "scientific precision," but may instead rely on his or her "knowledge, expertise and discretion as long as there is substantial evidence in the record regarding the nature of the violation, duration, and substantiality." *Kemp v. Marshall Heights Cmty. Dev.*, TP 24,786 (RHC Aug. 1, 2000) at 8 (*citing Calomiris v. Misuriello*, TP 4809 (RHC Aug. 30, 1982) and *Nicholls v. Tenants of 5005, 07, 09 D St., S.E.*, TP 11,302 (RHC Sept. 6, 1985)). It is not necessary for an Administrative Law Judge to receive expert testimony or precise evidence concerning the degree to which services and facilities have been reduced in order to compensate Tenant for the value of the reduced services.

20. Tenant complains that she lost free, undisturbed, use of her backyard in the fall of 2005 and has not yet regained it.

21. The yard situation was an unfortunate one for all involved. Unfamiliar workers arrived without notice. Tenant responded with letters to TPBC. As Tenant's letters and testimony amply illustrate, much work needed to be done on the outside of her house. It is reasonable to assume that workers needed to walk through her yard and leave supplies there for work the next day. The disruption in the yard was necessary to perform the work. Therefore, Tenant does not recover for a reduction in facilities for the limited use of her yard when work was in progress.

22. Tenant also argues that lack of storm windows was a reduction in a facility on which she depended for comfort and cost savings. Without them the house was colder and heating bills higher. I agree.

23. Tenant is entitled to $15 a month for each winter month during which the previous enjoyed storm windows had been absent. Those months are: November and December of 2006, and January, February and March of 2007, for a total of $75.00, plus interest. The following chart illustrates this refund plus interest calculation.

Month	Refund	Storm windows Months held	Interest rate	Interest Factor	Interest
Nov-06	15	14	0.004	0.056	0.04704
Dec-06	15	13	0.004	0.052	0.04056
Jan-07	15	12	0.004	0.048	0.03456
Feb-07	15	11	0.004	0.044	0.02904
Mar-07	15	10	0.004	0.04	0.024
	75				0.1752

24. Therefore, Tenant is entitled to $75 for the missing storm windows plus interest for a total of $75.18. Total due Tenant from rent overcharges and interest ($2127) plus lack of storm windows ($75.18) is $ 2202.18.

D. Retaliation Claim

25. Tenant alleges that TPBC retaliated against her because she asserted rights conferred by the Rental Housing Act of 1985. D.C. Official Code § 42-3505.02. To succeed on this claim, Tenant must prove that within six months of her engaging in a "protected act" TPBC took certain statutorily defined "housing provider action." If she succeeds in meeting the threshold requirements, Tenant benefits from a presumption of retaliation, including that the housing provider took "an action not otherwise permitted by law," unless TPBC "comes forward with clear and convincing evidence to rebut this presumption." D.C. Official Code § 42-3505.02 (b); *DeSzunyogh v. Smith*, 604 A.2d 1, 4 (1992); *Twyman v. Johnson*, 655 A.2d 850, 858 (D.C. 1995).

26. The analysis begins with "housing provider action," which is:

> [A]ny action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.

D.C. Official Code § 42-3505.02(a).

27. Second, Tenant must have exercised a right, which means the tenant:

> Has made a witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;
>
> Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;
>
> Legally withheld all or part of the tenant's rent after having given a reasonable notice to the housing provider, either orally in the presence of a witness or in writing, of a violation of the housing regulations;
>
> Organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;
>
> Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider; or
>
> Brought legal action against the housing provider.

D.C. Official Code § 42-3505.02(b).

28. Third, Tenant must show that she exercised a right under § 42-3505.02(b) of the Act within *six months* of the housing provider's action under § 42-3505.02 (a) of the Act.

29. If Tenant meets those three criteria, she benefits from a presumption that Housing Provider retaliated against her. The burden then shifts to TPBC to rebut the presumption with clear and convincing evidence. *Id.* However, if Tenant fails to meet the three threshold criteria, she is not entitled to the presumption of retaliation.

30. When the facts of this case are viewed in light of the statutory language on retaliation, the following explication emerges. In September 2005, Tenant paid what she thought was her rent, without the increase. By September 26, 2005, TPBC was on notice that she had called DCRA for an inspection (an exercised right under § 42-3505.02(b) of the Act) because she told them so in a letter. The first inspection was conducted less than a week later, on October 5, 2005. Following the exercised right, TPBC filed a Complaint for Possession of Real Estate with the Landlord and Tenant Branch of Superior Court (Housing Provider action under D.C. Official Code § 42-3505.02(a)) on October 24, 2005. Since the Housing Provider action occurred within six months of the protected act, Tenant prevails on the threshold question and is entitled to the presumption of retaliation. TPBC now has the burden of rebutting that presumption with clear and convincing evidence.

31. TPBC argues that the eviction notice was justified because Tenant had not paid the rent increase it had charged. However, as noted above, that increase was not valid and, therefore, not "otherwise permitted by law." *See DeSzunyogh,* 604 A.2d at 4. Consequently, TPBC does not sustain its burden of rebutting the presumption of retaliation and Tenant prevails.

32. Because of the retaliatory conduct, TPBC is subject to a fine of up to $5,000 if its actions were willful. D.C. Official Code § 42-3509.01 (b) (3); *Miller v. D.C. Rental Hous. Comm'n*,

870 A.2d 556 (D.C. 2005). The fine may be imposed "only where the housing provider intended to violate or was aware it was violating the Rental Housing Act." *Miller*, supra at 559. In this case, the Complaint in Landlord Tenant Court against Tenant was filed when Housing Provider must have known the 2005 rent increase was incorrect. The retaliatory conduct, a Complaint filed in Superior Court, was based on Tenant's failure to pay that invalid increase. Therefore, TPBC knowingly and willfully violated the Act when it filed the Complaint. A fine of $500 is imposed.

33. There is also a question whether Housing Provider's action in 2006 was retaliatory. Tenant sent TPBC letters during the summer and fall of 2006. The letter dated August 11, 2006, complained that TPBC workers were arriving in her yard without notice, a yard Tenant maintained at her expense according to instructions she received when she first rented the house. By letter dated September 7, 2006, Tenant complained, among other things, of damage to recent gutter work. By letter from TPBC to Tenant dated September 21, 2006, Housing Provider acknowledged the need to perform external repairs and painting. Therefore, Tenant has met her burden of showing that by August 11, 2006, she had exercised protected acts under § 42-3505.02(b) of the Act by alerting Housing Provider to violations of rights she had under her lease for the "quiet enjoyment of the premises," PX 102, and then, on September 7, 2006, for needed repairs.

34. On November 12, 2006, Housing Provider sent Tenant a 30-day Notice to Correct or Vacate. That notice amounted to Housing Provider action under § 42-3505.02(a) of the Act. Since it occurred within six months of a protected act, Tenant again benefits from a presumption of

retaliation. Therefore, TPBC has the burden to rebut that presumption with clear and convincing evidence.

35. The Notice to Vacate cites the violation as non payment of rent in the correct amount for September 2006 and October 2006 and "uncooperative with Landlord."

36. At the hearing, TPBC conceded that the 2006 rent increase notice was not clear and, therefore, not effective until October 1, 2006. Yet, on November 12, 2006, Landlord sent Tenant a Notice to Correct or Vacate for "No payment of rent for September 2006 in the amount of $982.00." Subsequently, on January 29, 2007, TPBC requested in the Landlord Tenant Branch of Superior Court a non redeemable judgment for eviction against Tenant for failure to pay full rent.

37. Accordingly, Tenant benefits from a presumption of retaliation because a housing provider action (Notice to Vacate) followed protected acts (August 2006 and September 2006 letters from Tenant) within six months.

38. Under the Act, TPBC can rebut the presumption with clear and convincing evidence that its action was not retaliatory. TPBC argues that it was justified in attempting to evict Tenant because she had not paid the rent increase. This argument presupposes that Tenant was aware of the rent increase, but she was not. With due diligence, TPBC would have known that Tenant had no notice because certified letters mailed to her with the notice of rent increase were returned unsigned and undelivered. Accordingly, Tenant has succeeded in proving retaliation. However, in this instance, I am unable to find the willfulness necessary to impose a fine. It has not been shown that Mr. Brown was aware that the certified letters had not been delivered.

IV. Conclusions of Law

In sum, TPBC demanded an invalid rent increase in 2005 by filing two CPI-W forms that year, entitling Tenant to a rent refund plus interest. D.C. Official Code § 42-3502; *Sawyer,* 877 A. 2d at 104. Although Tenant has not proven substantial housing code violations in 2006 that would have invalidated the rent increase for that year, she has proven that a reduction in services and facilities under § 42-3502 of the Act that entitles her to a rent reduction for winter months for the loss of storm windows. Finally, Tenant has proven retaliatory conduct under § 42-3505.02 for which TPBC must pay a fine for one instance of retaliatory conduct, although no fine is imposed for the second instance.

V. Order

Therefore, it is this 29th day of January, 2008:

ORDERED, that TPBC pay Tenant $2127 for rent overcharges plus interest and $75.18 for lack of storm windows for a total of $2202.18; it is further

ORDERED, that TPBC pay $500 in fines to "D.C. Treasurer;" and it is further

ORDERED, that either party may move for reconsideration of this Final Order within ten days under OAH Rule 2937, 1 DCMR 2937; and it is further

ORDERED, that the appeal rights of any party aggrieved by this order are set forth below.

January 29, 2008

_____/s/_____
Margaret A. Mangan
Administrative Law Judge